of section 15 of the Indian Civil Procedure Code of 1859, since that Code is not readily available now. That section provides that "No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief". It will be seen that its provisions are very similar to those of Order 25 Rule 5 of the Rules of the English Supreme Court, and the Courts in India, when construing its provisions, followed the decisions of the English Supreme Court construing Order 25 Rule 5 of its Rules.

Now in one sense of the words used I agree that Mat Sah was "interested to deny" the Plaintiff's claim to be Mahmud's only son, although he himself had never put forward any claim to be a son of Mahmud, because it was conceivable that he might decide to do so; and if he did, then he would almost certainly claim to be beneficiary under the deed of settlement which Mahmud executed for the purposes of this suit and for no other purposes. But if that is the sense in which the words "interested to deny" in section 42 of the Specific Relief Enactment are to be construed, then such an action as this might quite properly be brought against every man living in Kampong Kepayang who is of such an age that he might, conceivably, be a son of Mahmud. Personally, I find it impossible to construe them in that sense, and when they are read together with the other words in that section I hold the view that they mean "interested to deny" by reason of some claim put forward by or on behalf of the person so "interested".

Mr. Woods cited two cases on section 42 of the Indian Specific Relief Act, in which men were granted decrees declaring that certain children were not their respective sons. These cases are *Chinnasami Mudaliar v. Ambalavana Mudaliar* (I.L.R. Madras Series (1906) Vol. 29, 48.) and *Agarsinghji Raisinghji* (I.L.R. Bombay Series (1910) Vol. 34, 676.) To my mind both of them support the conclusion at which I have just arrived in regard to the meaning of the words "interested to deny" in section 42 of our Specific Relief Enactment, and I rely in particular on the opening passage of the judgment in the Madras case, and the passage about the Plaintiff's hand having been forced by an "open assertion of a definite claim" on behalf of the minor Defendant at page 684 in the judgment in the Bombay case. There was certainly no "open assertion of a definite claim" by Mat Sah in this case before the Plaintiff instituted his suit.

It is now possible to summarise my reasons for dismissing the Plaintiff's claim at the close of his case. I was of opinion that both the declarations sought by the Plaintiff were quite outside the scope of section 42 of the Specific Relief Enactment because that section, which is exhaustive of the cases in which decrees merely declaratory can be made, does not enable a plaintiff to obtain a declaration about the legal character of any person except himself. I was also of opinion that no amendment of the prayer could be devised which would enable the Plaintiff's suit to proceed any further, because no open assertion of any definite claim to be a son of Mahmud had ever been made by or on behalf of Mat Sah before the suit was instituted, and therefore he could not properly be described as a "person denying or interested to deny" the Plaintiff's title to any legal character or right.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

CUSSEN, J.

June 15, 1938.

RM. PL. N. NACHIAPPA CHETTIAR

(Plaintiff).

v.

K. AL. KR. OTHERWISE KR. AL. OTHERWISE K. AL. KARUPPAN CHETTIAR AND OTHERS.

(Defendants).

(SELANGOR CIVIL SUIT No. 94 of 1936)

Partnership—Joint Hindu Family—Liability for debts of firm—Infant partner—Benefits.

Where a Hindu trading family carries on a joint family business, whether that business be ancestral or new, the manager and all adult male members of the family who take an active part in the conduct and management of the business are personally liable for debts.

A Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business does not necessarily become a member of the trading partnership which carries on the business. To render him liable as a partner the evidence must show some definite benefit accruing to the infant in excess of and quite distinct from anything to which he is entitled and would ordinarily receive merely by virtue of his position as a member of the joint family.

TRIAL OF ACTION.

V. Mackie for Plaintiff.

A. J. Bostock-Hill for Second and Fifth Defendants.

Cussen, J.—In this suit the Plaintiff is suing the five Defendants personally for a sum of $6,943/- being the amount due as capital and interest in respect of certain loans made by him to the business or firm

of "K. AL. KR." There is no dispute as to this sum of money being due by "K. AL. KR." to the Plaintiff. There is only one issue in dispute, *i.e.* whether the Defendants, all or any of them, are liable for this debt of "K. AL. KR.", and, as regards this particular issue, only the 2nd and 5th Defendants contest it.

The first Defendant has died since the inception of this suit, and no Representative has been appointed.

The third and fourth Defendants have not entered an appearance and not defending the suit.

The first Defendant (Karuppan Chettiar—now deceased) is the father of the second, third and fourth Defendants (Alagappa, Renganathan, and Saminathan) and the fifth Defendant (Visvanathan) is the son of the second Defendant (Alagappa).

The five Defendants (in the life-time of first Defendant, which is the only period relevant in this suit) formed a joint and undivided Hindu Family of Nattukottai Chettiars residing at Devakottai in the Madras Presidency.

There was a family house at Devakottai.

The money-lending business of "K. AL. KR." was started in September 1929 at Kuala Lumpur.

The facts, as I find them, are as follows. (It may be pointed out that on the evidence given on both sides there is agreement as to many of these facts).

At the hearing before me oral evidence was given by the Plaintiff, and also by the fifth Defendant.

Evidence on commission was taken in India from (1) Pethaperumal Chettiar (for the Plaintiff), (2) the second Defendant Alagappa, (3) the third Defendant Renganathan (called as a witness for second Defendant) and (4) one V.R.A.L. Alagappa Chettiar (called by second Defendant). This evidence has all been put in at the hearing by consent.

Much of the evidence taken on commission is, in my opinion, irrelevant to the issue I have to decide, *i.e.* what was the business or firm of "K. AL. KR.", to whom did it belong as proprietor or as partners, and who, in consequence, are liable for its debts.

In 1929 the first Defendant and the second Defendant were at Devakottai in India, the third Defendant was in Ceylon, in business there, (there was a joint family business in Ceylon), and the 4th Defendant was in Seremban in the Federated Malay States, employed as an agent in a money-lending firm. Both he and second Defendant had previously been in Ceylon also.

The Plaintiff, who is the father-in-law of fourth Defendant, was also in India and was present at the family "Council" when it was decided that a joint family business of money-lending should be started in the Federated Malay States under the family Vilasam of "K. AL. KR."

The second Defendant himself tells us:—

> "It was settled in Devakottai that I should start (from) Devakottai and after consulting the fourth Defendant who was in Seremban, should choose a place for opening the firm. It was also agreed upon from what funds the firm was to be started. The first defendant said he had asked the third Defendant to send money from Puttalam (Ceylon), so the firm might be started. Third defendant had sent some amount from the Puttalam firm..... The Kuala Lumpur firm K. AL. KR. was started by myself and the fourth defendant for our joint family at the direction of my father.
>
> Besides the amount drawn from the Puttalam firm myself and the fourth defendant were to borrow amounts for the purpose of the firm on "Thavanai" (loans)."

So much for the origin of the money-lending business and firm of K. AL. KR. It is evident that it was started as a family trading business by the first Defendant with the acquiescence and consent of his three adult sons, and, certainly in the case of the second Defendant, with his active assistance as agent and manager.

On 18.3.30 the second Defendant borrowed from the Plaintiff a sum of $3,000/- for the purposes of the K. AL. KR. business, giving a "Thavanai" letter signed by himself.

On 21.9.30 this loan with interest amounted to $3,130.77 and on that date, at Penang, the Plaintiff, at the request of second Defendant and the fourth Defendant, lent a further sum to K. AL. KR. to bring the total up to $5,000/-. The second Defendant on this occasion was on his way back to India, the fourth Defendant remaining behind in charge of the business, which explains why the Thavanai letter given on this occasion for the $5,000/- was signed by the fourth Defendant.

On 12th July, 1933 at Devakottai in India, this loan (by then a sum of $6,156/- was due) being still unpaid, and the limitation period being nearly expired, a fresh acknowledgment by means of a Thavanai letter for this amount was given, on this occasion being signed by the first Defendant. At this time second, third and fourth Defendants were also all in India.

Now, leaving aside the position of the fifth Defendant, who was a minor at the relevant time, *i.e.* when these loans were made to the firm of K. AL. KR., the question for determination is—Is Defendant No. 2 personally liable for these debts of the firm K. AL. KR. In order to be so liable he must be in the position of a partner; his liability, in my opinion, must be established under the provisions of the Contract Enactment. either under section 249 as being in fact a partner; or under sections 245 or 246 by conduct.

A number of cases were cited and several commentaries quoted on the subjects of the joint Hindu family, the joint Hindu trading family, trading business, with the object of determining the liability of members of the joint family for debts incurred in such business. The cases cited were the following:—

Sanyasi Charan Mandel v. Krishnadhan Banerji, 49 I.A. 108.

The Official Assignee of Madras v. Palaniappa Chetty, 41 Madras 824.

Vadilal Lallubhai v. Shah Khushal Dalpatram, 27 Bombay 157.

Lutchmanen Chetty v. Siva Prokasa Modaliar, 26 Calcutta 349.

Chalamayapa v. Varadayya, 22 Madras 166.

B. Nath v. Fateh Lal, 29 Allahabad 176.

Inspector Singh v. Kharak Singh, 50 Allahabad 776.

Re Haroon Mohamed, 14 Bombay 189.

Passages from the following commentaries were quoted:—

Mulla's Principles of Hindu Law (8th edition 1936) at pages 236, 237, 258—9, 260.

Gour's Hindu Code (3rd edition) section 134, 140.

Pollock and *Mulla* on the Indian Contract Act p. 678.

The general proposition which I arrive at from a consideration of these is that where a Hindu trading family carries on a joint family business, whether that business be ancestral or new, the manager and all adult (male) members of the family who take an active part in the conduct and management of the business are personally liable for debts.

They are active members of the trading partnership carrying on the joint family business, in which they have a definable interest.

As such they are liable to the strangers, the third parties with whom the firm has business dealings, as partners. The position is set out clearly and fully in the following passage from the judgment of Subramania Ayyer, J. in the case of *Chalamayya v. Varadayya,* 22 Madras 166, a passage which has been referred to and adopted in all the subsequent cases which have been cited here. It is as follows:—

> "No doubt where it is shown that the contract relied on, though purporting to have been entered into by the manager only, is in reality one to which the other coparceners are actual contracting parties either because they had agreed, before the contract was entered into, to be personally bound thereby, or because they, being in existence at the date of the contract and competent to enter into it, have subsequently duly ratified and adopted it, in that case unquestionably every such coparcener is absolutely responsible. Equally he would be responsible though he did not assent to a particular contract if there had been such acquiescence on his part in the course of dealings in which the particular contract was entered into as to warrant his being treated in the matter as a contracting party."

The distinction appears to be that in ancestral joint family business the position of the members of the joint family is created by the operation of law, independently of the volition of the members, and so they have no personal liability for debts incurred in the business (except the manager or other actual party to the contract), but the whole family property, in which they have an interest, is, by reason of its unity, that it is one and undivided, liable in discharge of the debts; but, in the case of adult members, whether the business is ancestral or new, if there is assent or acquiescence, if they take an active part in the formation, conduct or management of the business, then there is supplied or added the contractual element of agreement, the free choice and will of the member himself, which brings

him within the provisions of the Contract Enactment defining the relation of partnership.

In the one case his share in the joint family property is involved in the business in combination with the shares of his fellow members, irrespective of his assent, and so he incurs no personal liability; in the other case, either expressly or by conduct, he adds his agreement, his assent, and thereby completes the requirements of section 239 of the Contract Enactment, so placing himself in the position of a partner, with the personal liability attaching thereto.

Now applying this to the position of the second Defendant the result is that, in my judgment, there is ample evidence for holding that he was a partner in the firm of K. AL. KR and liable as such.

In addition to what I have already referred to as regards the part he took in the origin and conduct of the business he tells us that the "K. AL. KR. firm in Kuala Lumpur was in my name originally. . . .Every asset, every property, every outstanding stood in the name of K. AL. KR. Alagappa Chettiar (his own name)".

I therefore hold that the second Defendant was a partner in the firm of K. AL. KR. and so personally liable for the debts thereof incurred while he was a partner. The other partners in the firm being, from its inception, the first, third and fourth Defendants.

The position of the fifth Defendant must now be considered. He is the son of second Defendant, and at the time when these loans were contracted he was a minor.

He was born on 3rd August 1914 and so did not attain his majority (18 years) until 3rd August 1932.

It is clear that his liability, if any, can only arise under the provisions of sections 247 and 248 of the Contract Enactment.

These sections read as follows:—

> "247. A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.
>
> 248. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership."

The question which has to be considered is what constitutes "admission to the benefits of partnership."

On this question two Indian cases were cited:—

(1) *Lutchmanan Chetty v. Siva Prokasa Modaliar* (1899), 26 Calcutta 349; 13 Indian Decisions 826.

Sale, J. in his judgment states:—

> "A trade like other personal property is descendible among Hindus, but it does not follow that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business becomes at the same time a member of the trading partnership which carries on the business. He can only become a member of the partnership by a consentient act on the part of himself and his partners."

This was of course long before the decision of the Privy Council in *Mohori Bibee v. Dhurmodas Ghose* in 1903 (30 I.A. 114) which held that under the Indian Contract Act an infant had no contractual capacity and so could not enter into an agreement of partnership (see also 49 Indian Appeals 108 at page 116).

The other case cited on this point is *The Official Assignee of Madras and another v. V.P.L.R.M. Palaniappa Chetty* (I.L.R. (1918) XLI Madras 824).

In his judgment Wallis, C.J. states (at page 830):—

> "The interest of a minor in a joint Hindu family business, whether existing at the date of his birth or founded during his minority, is acquired by virtue of his belonging to the family and does not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership. Consequently I think that such minors are not governed by sections 247 and 248 of the Contract Act. This, I think, is in accordance with the weight of authority and there is no direct authority the other way. Further, I think that the fact of a minor helping in the family business as in the present case does not constitute admission to the benefits of the partnership within the meaning of section 247 of the Indian Contract Act but may be referred to his position as a minor member of the family."

Spencer, J. states in the same case:—

"But as I observed in *Gargayya v. Venkalramanyaya* a definite and conscious act on the part of the other partners is needed for admitting a minor to the benefits of partnership. I do not find that it has been anywhere defined what are the acts which would constitute admission to the benefits of partnership. Mr. Justice Abdur Rahim considers that it implies some definite act such as the allotment of a share or the distribution of a part of the profits or something of an analogous nature. In *Anart Ram v. Chamu Lal* there is an observation that admission to partnership can only be with the unanimous consent of those who are already partners. I am already of opinion that admission to the benefits of partnership means something more than the mere incident of birth in a particular family. The equivocal acts of the respondent during his minority would not have the effect of investing him with the responsibility of a partner. I think that sections 245 and 246 of the Contract Act can be applied only to the conduct of persons who are competent to contract and not to minors."

Applying these principles to the present case the evidence must show, in my opinion, some definite benefit accruing to the minor (the 5th Defendant) in excess of and quite distinct from anything to which he is entitled and would ordinarily receive merely by virtue of his position as a member of the family.

What are the benefits of partnership?

They must fall within the definitions in section 253 of the Contract Enactment defining, in the absence of any contract to the contrary, the relations of partners.

The *benefits* set out in that section would appear to be:—joint ownership of the partnership property—his share being the value of his original contribution increased by his share of the profits: a right to share equally in the profits of the partnership business.

It is somewhat difficult to see what this confers more than what a member of a joint Hindu family is entitled to as such. Possibly an equal share in the distribution of profits is something more, for, as I understand it, as a member of a joint family, he would be entitled not to equal provision with any other member but only to adequate provision.

Of course on a partition he would be entitled to an equal share of the joint property with his fellow coparceners.

What evidence is there in the present case to prove admission to the benefits of partnership?

Defendant No. 5 first came to the Federated Malay States in 1931, being then a minor, and commenced to learn the business (of money-lending) in the firm of K. AL KR. The business was then in charge of an agent, Doraisamy.

In 1933 a letter, or part of a letter from K. AL. KR to India is proved to have been written by Defendant No. 5. A copy of the 1933 accounts of the firm, sent to India, was written out by him, and in 1934, when his father (Defendant No. 2) had returned to the Federated Malay States and had started the K.R.A.L. business, we find that the Defendant No. 5 is given a Power of Attorney by Defendant No. 2 who styles himself in it as both K. AL. KR. and K.R.A.L. And the fact that, only like all the other members of the joint family, he was maintained from the income or profits of the business.

I see nothing in this to constitute admission to the benefits of partnership.

I might also point out that the two loans, the basis of the Plaintiff's claim, were made in 1930, so that even if it were possible to hold that in 1931 when he came to work in the business of K. AL KR., he was thereby admitted to the benefits of partnership, he would still, under section 248 of the Contract Enactment, be liable only for the obligations incurred by the partnership since he was so admitted.

I hold, therefore, that the Plaintiff's claim fails against the 5th Defendant.

There will then be judgment for the Plaintiff against the second, third and fourth Defendants (*i.e.* Alagappa Chettiar, Renganathan Chettiar, and Saminathan Chettiar) for the sum of $6,943/- with interest thereon at the rate of 4¼ per cent per annum from the date of the suit to the date of judgment and interest on the aggregate amount at the rate of 5 per cent per annum from the date of judgment until payment.

The claim of the Plaintiff against the fifth Defendant is dismissed with costs.

The costs which the Plaintiff is entitled to recover should be paid by the second Defendant. The order then will be that the second Defendant do pay the Plaintiff's costs of this suit.

Claim dismissed.